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PROPERTY LAW: 1989-90

VOLUME THREE: LANDLORD AND TENANT

J. Phillips
Faculty of Law
University of Toronto

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NOTE: In Earl Bathurst v. Fine, [1974] 2 All E.R. 1160 (C.A.) the court considered whether the personal attributes of the tenant should be taken into account in an application for relief. An English country house was leased to an American for 20 years. The lease contained certain stipulations, interpreted thus by Lord Denning:

These stipulations seem to me to show very clearly that the personal qualifications and suitability of Mr. Fine as a tenant were very much at the heart of this lease. It was fundamental that he would be there himself and that he would reside there himself and keep the house in a character fitting the estate.

The tenant departed for France for a time, and was then not permitted to re-enter England. His absence resulted in the operation of a clause of the lease which would forfeit the term. The tenant, admitting that he had no defence to the forfeiture, applied to the court for relief. Lord Denning said:

This case is unusual because it concerns the personal qualifications of the tenant. How far are those to be taken into account in granting or refusing relief from forfeiture? In many cases it would not be a ground for refusing relief, but in some cases it is. For instance, we have been referred to section 146 (9) of the Act of 1925 (a new section in 1925 which was not in the Conveyancing Act 1881) which shows that there are leases, such as leases of agricultural land, where the personal qualifications of the tenant are of importance. It says:

"This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest" in the case of five classes of lease, including "(e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property..."

That applies to forfeiture for bankruptcy or execution, but it seems to me that it is a legitimate consideration in other cases when relief is being considered. It applies in any case where the personal qualifications of the tenant are of importance for the preservation of the value or character of the property. This is essentially such a case. If the tenant is shown to be unsuitable personally, then relief can be refused. Here we have a man who is not a subject of this country but an American citizen. He has behaved in such a way that he is banned from entering this country and he is not a fit person to be a tenant of this property. The judge was quite right in refusing relief.

